ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Policy and Rules Concerning the Interexchange Marketplace	)	
	)	CC Docket No. 96-61
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	
	)	

COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits the following comments on Sections V and VI of the Commission's *Notice of Proposed Rulemaking* ("*Notice*") issued in this docket.[1]

I. SUMMARY

As explained below, CompTel believes that now is not an appropriate time to modify the Commission's nondominant carrier rules as they apply to the interexchange services of independent LECs or the BOCs. The Commission has no experience with the BOCs' provision of interLATA services and it is grossly premature to consider reducing the

[1] FCC 96-123 (rel. March 25, 1996). The *Notice* asks for comment on Sections IV, V, and VI separate from comment on all other sections of the *Notice*. CompTel will submit its comments on the other sections of the *Notice* by April 25, 1996.

regulation proposed only two months ago in Docket 96-21 (indeed, as CompTel explained in that docket, the safeguards against BOC abuse of their local monopoly power should be strengthened). As to the independent LECs, the Commission does not cite to any changes in circumstances since it adopted the separate subsidiary rules that would merit reconsideration at this time. Without compelling record evidence of public harm from the existing rules and a cost/benefit analysis of reduced requirements, the Commission should not modify its regulations.

In addition, the *Notice* correctly recognizes that Section 254(g) of the Telecommunications Act of 1996 ("1996 Act") merely codifies existing FCC interexchange carrier policies. As such, the Commission's rules implementing Section 254(g) should make clear that the rate averaging and rate integration provisions of the 1996 Act are not violated by distance-sensitive interexchange rates, by the offering of customer-specific contracts for service, or by carrier promotions and optional calling plans. Moreover, the Commission should make plain that carriers are not required by Section 254(g) to offer service in all areas of the country. Nothing in the proposed rules should be interpreted to limit the ability of an interexchange service provider to choose in what regions it will operate and what services it will offer in each region. Finally, Section 254(g) does not require that every service option offered by an interexchange provider employ geographic averaging, only that the carrier's standard service packages be averaged.

II. THE SEPARATION REQUIREMENTS FOR BOC AND INDEPENDENT LEC PROVISION OF INTEREXCHANGE SERVICES SHOULD NOT BE MODIFIED IN THIS DOCKET

The *Notice* seeks comment on whether it should modify the separation conditions on which it will regulate interexchange services of independent LECs pursuant to nondominant carrier rules.[2] It also seeks comment on whether the Commission should modify its *proposed* rules applicable to the newly-authorized BOC out-of-region interLATA services.[3]

The proposal to modify regulation of the BOCs is particularly puzzling. The Commission has no experience with BOC provision of out-of-region interLATA services. Moreover, it does not even have "interim" rules in place which apply nondominant carrier rules to the BOCs. Indeed, the *Notice* in this docket was adopted only eight days after CompTel and others filed *initial* comments in the *BOC Out-of-Region* proceeding explaining why the "interim" rules needed to be strengthened before the Commission could conclude the BOCs were nondominant outside their local service regions.[4] One could hardly imagine how the Commission could have a reasoned basis in this situation to reduce the "interim" rules before it had even considered the comments it received in the *BOC Out-of-Region* proceeding.

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[2] *Notice* at ¶ 61.

[3] *Id.*

[4] *See Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services*, Notice of Proposed Rulemaking, CC Docket No. 96-21 (Feb. 14, 1996). Initial comments were due on March 13, 1996. Reply comments were not filed until March 25, 1996, *after* the *Notice* in this docket was adopted.

Furthermore, as CompTel explained in the *BOC Out-of-Region* proceeding, there is no basis for classifying the BOCs as nondominant except upon conditions more stringent than those currently applied to the independent LECs. The BOCs indisputably possess market power in local exchange services and this power can be used to gain an unfair advantage in interexchange services.[5] The BOCs could use their local service market power to damage the national reputation of their out-of-region rivals or to bully multi-city customers into selecting the BOC for their out-of-region long distance needs.[6] In addition, a BOC can leverage its local market power to the benefit of its out-of-region services through a variety of methods, including the sharing of local and interexchange equipment or personnel, joint marketing of local and out-of-region services, discriminatory access to services and information, and discriminatory pricing of essential exchange services.[7] To guard against these exercises of market power, CompTel proposed five conditions which, if satisfied, would permit the Commission to classify a BOC out-of-region affiliate as nondominant.[8] Specifically, BOC out-of-region services can be regulated according to nondominant carrier rules only if (1) the BOC's out-of-region services are physically and administratively separate, (2) the BOC does not jointly market local and out-of-region services, (3) the interLATA affiliate obtains Title II services from the BOC via generally applicable tariffs, (4) the interLATA affiliate does not receive discriminatory access to non-Title II services,

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[5] CompTel Comments at 2-7, CC Docket No. 96-21 (March 13, 1996).

[6] *Id.* at 3-5.

[7] *Id.* at 5-6.

[8] *Id.* at 8-11.

and (5) the BOCs treat transactions with their interLATA affiliates as transactions with nonregulated affiliates for accounting purposes. For these same reasons, the Commission cannot rationally conclude here that the BOCs are nondominant unless they meet these conditions.

As to the independent LECs, the Commission does not identify any changes in circumstances since it adopted the LEC separate subsidiary requirement that merit reconsideration of the public interest analysis it conducted in the *Competitive Carrier* proceeding.[9] Although the Commission's rules have been in place for over ten years, the *Notice* does not identify any evidence that those conditions have harmed the public or have made it more difficult for independent LECs to compete with other carriers in the interexchange marketplace. The Commission also does not weigh the costs and benefits of reducing the protection against the independent LECs' leveraging their local market power into the interexchange market. Without such evidence, it is inappropriate for the Commission to reconsider its rules for classifying independent LECs as nondominant carriers.

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[9] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Fifth Report and Order, 98 F.C.C.2d 1191, 1195-99 (1984).

III. SECTION 254(g) CODIFIES EXISTING GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION POLICIES

New Section 254(g) of the Communications Act requires the Commission to:

> . . . adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.[10]

In other words, an interexchange service provider may charge no more for a service offered in a rural, high-cost area than it charges for the same service in an urban area. Moreover, a provider must charge the same for services in one State as it does for the same services in any other State.

As the Commission observes in the *Notice*, Congress intended the rate averaging and integration provisions of the 1996 Act to codify existing FCC policies.[11] The Joint Explanatory Statement accompanying the 1996 Act explains: "New Section 254(g) is intended to incorporate the policies of geographic rate averaging and rate integration of interexchange services to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers."[12] These policies arose out of concerns over the rates

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[10] 47 U.S.C. § 254(g).

[11] *See Notice* ¶¶ 66-67, 74-76.

[12] Joint Explanatory Statement, 18.

charged by dominant carriers, particularly AT&T (which was regulated as a dominant carrier until only a few months ago).[13]

CompTel supports the Commission's statement of the general rule implementing Section 254(g).[14] However, consistent with the Commission's existing practices, the final rule implementing Section 254(g) should clarify its geographic averaging and rate integration policies in three ways.

First, the FCC should explicitly acknowledge that distance-sensitive rates, customer-specific contracts, and promotions or optional calling plans do not violate the Commission's geographic averaging and rate integration policies. The Commission has historically permitted carriers to offer interexchange services at distance-sensitive, banded rates. Rate averaging requires only that the same mileage bands be offered regardless of originating location; it does not require that the caller pay the same charge for all calls to a given city, regardless of the originating location of the call. Similarly, non-discriminatory customer contract offerings have long been permitted by the Commission, as have promotions and optional calling plans. The Commission traditionally has recognized that these types of offerings in fact constitute different services and that rates based on different calling patterns therefore do not contravene the Communications Act. Nothing in the Commission's rules implementing Section 254(g) should alter these policies.

Second, the Commission should not interpret Section 254(g) to require interexchange service providers to offer each service ubiquitously or even to all locations within a

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[13] *See* cases cited in *Notice* ¶ 66, n. 147.

[14] *Notice*, ¶¶ 67, 76.

geographic area or state that the provider serves. Nothing in the Communications Act, including the 1996 amendments, or in previous FCC policies requires nondominant interexchange carriers to extend the areas that they serve or to serve particular areas. To the contrary, the carrier always has had the ability to specify where and when it will offer its services to the public. (Of course, once a carrier decides to offer services in particular regions, Section 254(g) requires geographically averaged rates in those areas.) To require geographic ubiquity now not only is inconsistent with Section 254(g) but also would be contrary to the public interest because it would delay the introduction of new services that are cost-justified in some areas but not in others. The end result would be less competition and fewer choices for all consumers, including those in rural and high cost areas.

Third, Section 254(g) does not require that every option within a service offering employ geographically averaged rates, as long as each standard service package is geographically averaged. The Joint Explanatory Statement explains that the purpose of Section 254(g) is "to ensure that subscribers in rural and high cost areas . . . are able to continue to receive both interstate and intrastate interexchange services at rates no higher than those paid by urban subscribers."[15] Moreover, Section 254(g) is included in the provisions dealing with universal service, which is a policy designed to ensure that a core set of standard services are available throughout the country.[16] This context suggests that the geographic averaging and rate integration provisions of Section 254(g) apply only to services

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[15] Joint Explanatory Statement, at 18.

[16] *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 96-93 (March 8, 1996); *See* CompTel Comments at 5-7, CC Docket No. 96-45 (April 12, 1996).

commonly considered to be promoted by universal service, *i.e.*, to a carrier's standard offering for each service, and does not prohibit the use of non-averaged rates for voluntary options on the standard plan.

Finally, the *Notice* also requests comment on mechanisms that should be used to ensure compliance with the geographic averaging and rate integration policies. CompTel believes the Commission does not need to require carrier certifications to enforce the provisions of Section 254(g). The Commission has a variety of enforcement mechanisms available, including scrutiny of carrier-filed tariffs[17] and its formal and informal complaint processes. Requiring carriers to file certifications of compliance will not materially advance the Commission's enforcement objectives. While carriers certainly would not make false representations to the Commission, an annual certification does little to assist in identifying ambiguities in the Commission's policies or in correcting erroneous interpretations of the Commission's rules.[18] The Commission therefore should enforce its rate averaging policies through less regulatory means.

CONCLUSION

For the foregoing reasons, the Commission should not modify its dominant carrier rules for independent LECs or the BOCs at this time. Further, the Commission should

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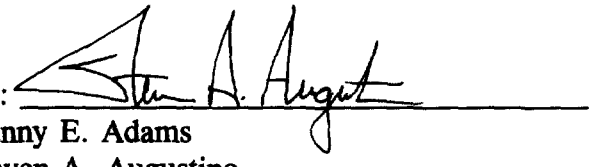
[17] CompTel recognizes that the *Notice* proposes to require detariffing for nondominant carriers, and will submit its comments on that proposal on April 25, 1996.

[18] If a certification is required, however, it should be incorporated in another filing routinely made by carriers (as the Commission does with certifications pursuant to the Anti-Drug Abuse Act). CompTel suggests using either carrier regulatory fee forms or TRS Fund forms for this purpose.

implement the geographic averaging and rate integration provisions of Section 254(g) but should clarify that its rules do not affect existing policies permitting distance-sensitive rates, customer contract services, optional calling plans, and carrier discretion to determine the areas they will serve.

Respectfully submitted,
THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION

By: 

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